

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9	LIN WANG, and FEN YING YIN,)	Case No. 14-cv-03501-SC
)	
10	Plaintiffs,)	ORDER ADOPTING MAGISTRATE'S
)	<u>REPORT AND RECOMMENDATIONS</u>
11	v.)	
)	
12	CITY AND COUNTY OF SAN)	
	FRANCISCO, et al.,)	
13)	
	Defendants.)	
14)	
)	
15)	
)	
16)	
)	

Plaintiffs Lin Wang and Fen Ying Yin filed this action on August 4, 2014, bringing an array of tort claims apparently arising out of their allegedly wrongful arrest and detainment (though the complaint is far from clear and rather short of details). See ECF No. 1 ("Compl."). The case was assigned to Magistrate Judge James. On October 31, 2014, Judge James vacated the case management conference scheduled for November 6 because there was no indication that any defendant had been served. See ECF No. 5. Judge James ordered Plaintiffs to file a status report by November 13. Plaintiffs never filed anything, and, on November 19, Judge James

1 ordered Plaintiffs to show cause why the action should not be
2 dismissed for failure to prosecute. See ECF No. 6. Plaintiffs
3 filed a declaration in response, explaining that the failure to
4 serve Defendants was the result of confusion and staffing changes,
5 and that Plaintiffs expected Defendants to acknowledge service
6 within a week. See ECF No. 7 ¶¶ 10-15. Seven weeks later,
7 Defendants had still not been served. On January 20, 2015, Judge
8 James again ordered Plaintiffs to show cause why the action should
9 not be dismissed for failure to prosecute and to comply with court
10 deadlines. See ECF No. 9. Plaintiffs were ordered to show cause
11 by January 27, 2015, but they did not file any response to the
12 order. Accordingly, Judge James issued a report and recommendation
13 on February 2 recommending that this case be dismissed without
14 prejudice. ECF No. 10 ("Magistrate Rpt.").

15 Objections to Judge James's report and recommendation were due
16 on February 17. On February 17, Plaintiff Lin Wang filed an
17 objection to the report. ECF No. 13 ("Pl.'s Obj."). Ms. Wang's
18 objection specified that her counsel had been "working to serve
19 Defendants through counsel" and was waiting for Defendants to
20 acknowledge receipt of service. Pl.'s Obj. ¶ 13.

21 It is now more than two weeks after Ms. Wang filed her
22 objection. The record still does not indicate that any defendant
23 has been served.¹ Seven months have passed since Plaintiffs filed
24 this action, and almost four months have passed since Judge James
25 first ordered Plaintiffs to show cause. Plaintiffs have had more

26
27 ¹ Ms. Wang did provide proof of service by mail of her objection
28 (see ECF No. 14), but there is no indication that any defendant has
been served with the complaint and summons.

1 than an adequate opportunity to serve Defendants, but they have
2 consistently failed to do so, and they have failed to comply with
3 court orders. Despite their protestations to the contrary, there
4 is no indication of Plaintiffs' efforts to serve Defendants in the
5 weeks following their objection. Accordingly, the Court OVERRULES
6 Plaintiff Lin Wang's objection to Judge James's report. The Court
7 adopts Judge James's report and recommendation. This matter is
8 DISMISSED WITHOUT PREJUDICE. Plaintiffs may refile their case if
9 and when they are prepared to prosecute it and to abide by court
10 orders and deadlines.

11
12
13 IT IS SO ORDERED.

14
15 Dated: March 6, 2015

16 
UNITED STATES DISTRICT JUDGE